

# SOLICITOR

AO 120 (Rev. 3/04)

JUN 29 2009

TO: **Mail Stop 8**  
**Director of the U.S. Patent and Trademark Office**  
**P.O. Box 1450**  
**Alexandria, VA 22313-1450**

**REPORT ON THE**  
**FILING OR DETERMINATION OF AN**  
**ACTION REGARDING A PATENT OR**  
**TRADEMARK**

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
filed in the U.S. District Court OREGON on the following ☒ Patents or Trademarks:

DOCKET NO. CV 09-719 MO	DATE FILED 6/23/09	U.S. DISTRICT COURT District of Oregon
PLAINTIFF  Warn Industries, Inc.		DEFENDANT  Mile Marker, Inc
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 See attached		
2 6,864,650		
3 5,261,646		
4 Re. 36,216		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK  Mary Moran	(BY) DEPUTY CLERK 	DATE  6/24/09
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

9/10/09  
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b

Attorneys for Plaintiff, Warn Industries, Inc.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

WARN INDUSTRIES, INC., a Delaware  
corporation,

Plaintiff,

vs.

MILE MARKER, INC., a Florida  
corporation,

Defendant.

CV '09 - 719 - MO - 1  
No. \_\_\_\_\_

COMPLAINT FOR PATENT  
INFRINGEMENT

DEMAND FOR JURY TRIAL

For its Complaint, Plaintiff, Warn Industries, Inc., alleges as follows:

**NATURE OF THE CASE**

1. Plaintiff brings this action seeking injunctive relief and damages as a result of Defendant's infringement of Plaintiff's U.S. Patent Nos. 6,864,650 ("the '650 Patent") and Re. 36,216 ("the '216 Patent"), (collectively "the Warn Patents").

**THE PARTIES**

2. Warn Industries, Inc. ("Warn") is a Delaware corporation with its principal place

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of business at 12900 S.E. Capps Road, Clackamas, Oregon 97015. Among other activities, Warn is in the business of designing, manufacturing, and selling winches (both recreational and industrial) and winch-related products.

3. Upon information and belief, Defendant Mile Marker, Inc. ("Mile Marker") is a Florida corporation with its principal place of business located at 2121 Blount Road, Pompano Beach, Florida 33069. Upon information and belief, Mile Marker is in the business of manufacturing and selling, among other things, winches and winch-related products.

### **JURISDICTION AND VENUE**

4. Warn's cause of action for patent infringement against Mile Marker arises under the Patent Laws of the United States, 35 U.S.C. §§271, 281-85. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. §§1331 and 1338(a).

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391(b) & (c) and 1400(b). Mile Marker has committed acts of infringement in this district and resides here. Mile Marker sells and offers to sell winches and winch-related products that infringe one or more claims of the '650 and '216 Patents within this judicial district.

### **CLAIM FOR RELIEF**

#### **(Patent Infringement)**

6. Warn incorporates by reference the allegations of paragraphs 1-5 as if fully set forth at length.

7. Warn owns all right, title, and interest in U.S. Patent No. 6,864,650 entitled "Winch Controller", which was duly and legally issued to Warn by the U.S. Patent and Trademark Office on March 8, 2005. A true and correct copy of the '650 Patent is attached to this Complaint as **Exhibit A**.

8. Warn owns all right, title, and interest in U.S. Patent No. 5,261,646, entitled "Winch Having Automatic Brake", which was duly and legally issued to Warn by the United States Patent and Trademark Office on November 16, 1993, and reissued as Re. 36,216 on June 1, 1999. A true and correct copy of the '216 Patent is attached to this Complaint as **Exhibit B.**

9. Warn has at all material times complied with the requirements of 35 U.S.C. §287 with regard to the '650 and '216 Patents.

10. Mile Marker has infringed and is infringing the Warn Patents, by making, using, selling, offering to sell within the United States, or importing into the United States winches and winch controllers that infringe one or more claims of the '650 and '216 Patents. Upon information and belief, Mile Marker has also induced or contributed to infringement of the '650 and '216 Patents by other persons or entities, including one or more of Mile Marker's parent company, Mile Marker International, and sister corporations.

11. Mile Marker is not licensed or otherwise authorized to make, use, import, sell, or offer to sell any winch or winch related products claimed in the Warn Patents and Mile Marker's conduct is, in every instance, without Warn's consent.

12. By reason of Mile Marker's direct and indirect infringement, Warn has suffered, and will continue to suffer, substantial damages in an amount to be proven at trial.

13. Mile Marker's infringement has caused Warn irreparable harm, and Warn will continue to suffer irreparable damages unless Mile Marker is enjoined from its continued infringement of the '650 and '216 Patents. Warn has no adequate remedy at law for these wrongs and injuries. Warn is therefore entitled to injunctive relief, both preliminary and permanent, restraining and enjoining Mile Marker's ongoing infringement.

14. Upon information and belief, Mile Marker's infringement of the '650 and '216 Patents has been and continues to be willful. Accordingly, this is an exceptional case under 35 U.S.C. §285 and Warn is entitled to enhanced damages, attorneys' fees and litigation expenses incurred.

**PRAYER FOR RELIEF**

WHEREFORE, Warn prays for the following relief:

- A. A declaration that the '650 and '216 Patents are valid and enforceable;
- B. A judgment and declaration that Mile Marker has infringed the '650 and '216 Patents;
- C. A judgment and decree that Mile Marker and its subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, and all other persons in active concert or participation with them, be preliminarily and permanently enjoined from continuing infringement of the '650 and '216 Patents;
- D. An award of damages sufficient to compensate Warn for Mile Marker's infringement of the '650 and '216 Patents and a demand for an accounting to determine such damages;
- E. Enhancement of the damage award based on Mile Marker's willful infringement of the '650 and '216 Patents;
- F. An award of costs and attorneys' fees pursuant to 35 U.S.C. §285, and an assessment of interest, including prejudgment interest; and
- G. Such other relief as this court deems to be just and equitable.

**DEMAND FOR JURY TRIAL**

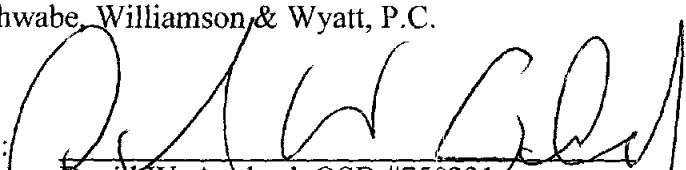
Pursuant to Fed. R. Civ. P. 38(b), Warn requests a trial by jury of all issues so triable.

Dated this 23rd day of June, 2009.

Respectfully submitted,

Schwabe, Williamson & Wyatt, P.C.

By:

  
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